

SEP 27 2002

DIANE D. ANDERSON
By Diane D. Anderson
Clerk of District Court

MONTANA NINTH JUDICIAL DISTRICT COURT, GLACIER COUNTY

STATE OF MONTANA,	*	Cause No. DC 01-64
	*	
Plaintiff,	*	JUDGMENT
	*	
vs.	*	
	*	
WENDY NIELSEN,	*	
	*	
Defendant.	*	

=====

The laws and statutes of the State of Montana having first been complied with when an Information was filed herein on the 18th day of October, 2001, by John K. Kurtz, Special Deputy Glacier County Attorney, charging the Defendant with THEFT BY COMMON SCHEME, a FELONY, in violation of Sections 45-6-301(1)(b) and 45-2-101(7) MCA (three counts); and, THEFT, a FELONY, in violation of Section 45-6-301(1)(b) MCA.

Following her initial appearance, the Court appointed James Johnson, Attorney at Law, to represent her as her counsel in this matter. The Court subsequently appointed Robert Olson, Attorney at Law, to assume representation of the Defendant in this matter. The Defendant appeared and was arraigned on the 18th day of October, 2001, then and there being accompanied and represented by her counsel, was advised of the nature of the charges against her, of the maximum

sentence after a plea or verdict of guilty, of her right to remain silent, of her right to a jury trial, to require the State to prove the charges against her beyond a reasonable doubt, to cross examine witnesses, the right to present witnesses on her own behalf and her right to appeal a finding of guilty. At that time, the Defendant entered pleas of not guilty to all charges contained in the Information.

Thereafter, pursuant to a Plea Agreement filed herein, the Defendant and her counsel advised the Court that the Defendant wished to enter a plea of guilty to the charges contained in the Information.

The Court readvised the Defendant of her rights as above set forth. Having questioned the Defendant and having determined to its satisfaction that the Defendant has knowingly and voluntarily entered a plea of guilty with advice from counsel to the charges in the Information, to wit: THEFT BY COMMON SCHEME, a FELONY, in violation of Sections 45-6-301(1)(b) and 45-2-101(7) MCA (three counts); and, THEFT, a FELONY, in violation of Section 45-6-301(1)(b) MCA, the Court accepted the Defendant's plea of guilty to the charges in the Information.

In responding to the Court's questioning and after consulting with her counsel, the Defendant knowingly and voluntarily waived her right to speedy trial, including her right to assert any defense on the possible tolling of the applicable statute of limitations.

The State then advised the Court that it wished to have a presentence investigation of the Defendant performed due to the fact that the Plea Agreement required the Defendant to pay restitution to victims. The Court then ordered a presentence investigation to be conducted by the Department of Probation and Parole. The Department of Probation and Parole subsequently filed its Presentence Investigation Report, dated June 26, 2002, with the Court.

The Court held a sentencing hearing on the 11th day of September, 2002. The State presented testimony from two victims of the Defendant's acts, [REDACTED] and [REDACTED] both of whom testified to the harm to the community caused by the Defendant's acts. The Defendant then testified regarding her remorse for the harm she caused by committing the crimes charged in the Information. The Defendant also requested the Court to replace the 10-day jail sentence to which she agreed in the Plea Agreement with community service. The State argued that the Defendant should not be permitted to escape this condition because she agreed to the agreement and because of the severity of her crimes.

The Court has considered the Plea Agreement. The Court further notes that the Defendant has agreed to certain other conditions set forth in the Plea Agreement.

The Defendant having advised the Court that there was no legal cause why judgment should not be entered, the Court imposed the following judgment and ordered the same filed.

For the foregoing reasons, it is the JUDGMENT of this Court that sentencing of the Defendant in this cause shall be deferred for a period not to exceed six (6) years on all counts on the following conditions:

a) That during the period of the deferred sentence, the Defendant shall remain under the supervision of the Montana Department of Probation and Parole, and shall, during that period, remain a good and law-abiding citizen, will obey all rules, laws and statutes of the United States of America, of the State of Montana, of the city or town in which she resides, and of any Indian reservation which she shall pass through and/or reside.

b) That the Defendant shall not hold a position of fiduciary responsibility, directly or indirectly, during the period of deferral.

c) That Defendant shall not apply for or be issued a Montana Insurance Producer license during the period of deferral, and that she shall voluntarily surrender her Montana Insurance Producer license immediately to the Montana Insurance Commissioner.

d) That the Defendant shall not possess, purchase, sell, or give away any narcotic or dangerous drug or imitation dangerous drug except on the prescription of a licensed physician that is not older than six months.

e) That any conditions of probation recommended by the Ninth Judicial District Probation and Parole Officer shall be incorporated in the sentencing Order.

f) That the Defendant shall serve 30 days in the Glacier County Jail, with 20 of those days suspended, and that the Defendant not be required to serve such jail time at one time, but may serve such time in 24-hour increments over the one year period following the date of sentencing.

g) That the Defendant shall pay restitution, plus 7% annual interest, to all known victims in this matter in the following amounts:

[REDACTED]	\$ 675.00
[REDACTED]	\$ 1,785.56
[REDACTED]	\$ 350.00
[REDACTED]	\$ 1,335.00
[REDACTED]	\$ 505.00
[REDACTED]	\$ 2,333.50
[REDACTED]	\$ 222.77
[REDACTED]	\$ 16,727.22
[REDACTED]	\$ 427.00
[REDACTED]	\$ 750.00
[REDACTED]	\$ 110.00

TOTAL: \$25,221.05

The monthly payment for restitution, which includes interest, will be \$430.02. The Defendant shall also pay \$3.47 for the monthly administration fee. The Defendant shall also reimburse Glacier County \$500.00 for her Court-appointed attorney fees, which amounts to an additional \$6.94 per month. The Defendant's total monthly payment for the above-described

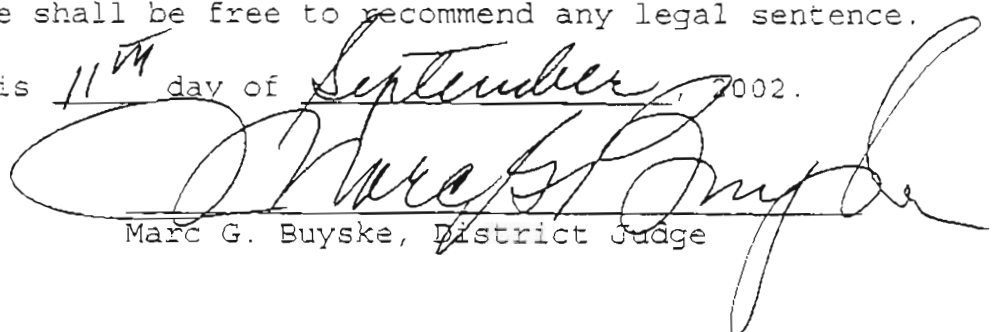
fees will be \$440.43, which will be paid each month to the Glacier County Clerk of District Court during the period of deferment.

h) That the Defendant shall immediately pay to the Glacier County Clerk of District Court the \$35.00 surcharge and Court Automation fee.

If the Defendant has complied with the terms and conditions as aforestated, then, in that event, at the end of one year from the date of sentencing, the State shall move to dismiss with prejudice to the merits the charges of THEFT BY COMMON SCHEME, a FELONY, in violation of Sections 45-6-301(1)(b) and 45-2-101(7) MCA (three counts); and, THEFT, a FELONY, in violation of Section 45-6-301(1)(b) MCA.

If, however, the Defendant fails to comply in any respect with the terms of the Plea Agreement on file herein between September 11th, 2008 and the date of sentencing, then, in that event, at the option of the State, the State shall be free to recommend to the Court that the Defendant not be allowed to withdraw her plea of guilty to the charges herein and, further, that the State shall be free to recommend any legal sentence.

Dated this 11th day of September, 2002.


Marc G. Buyske, District Judge

JOHN K KURTZ
SPECIAL DEPUTY GLACIER COUNTY ATTORNEY
840 HELENA AVENUE
HELENA, MT 59601
(406) 444-1936
ATTORNEY FOR PLAINTIFF

MONTANA NINTH JUDICIAL DISTRICT COURT, GLACIER COUNTY

STATE OF MONTANA,	*	Cause No. DC 01-64
	*	
Plaintiff,	*	PLEA AGREEMENT
	*	
vs.	*	
	*	
WENDY NIELSEN,	*	
	*	
Defendant.	*	

=====

The undersigned parties hereby enter into the following Plea Agreement.

Defendant above named hereby acknowledges that she has been charged with the following criminal offenses by Amended Information in the above entitled Court:

<u>OFFENSE</u>	<u>STATUTE VIOLATED</u>
THEFT BY COMMON SCHEME, A FELONY	§§ 45-6-301(1)(b) and 45-2-101(7), MCA;
THEFT, A FELONY	§ 45-6-301(1)(b), MCA;
THEFT BY COMMON SCHEME, A FELONY	§§ 45-6-301(1)(b) and 45-2-101(7), MCA; and,
THEFT BY COMMON SCHEME, A FELONY	§§ 45-6-301(1)(b) and 45-2-101(7), MCA.

Attorney for the Defendant, Robert G. Olson, Attorney at Law, Cut Bank, Montana, has entered into negotiations with attorney for Plaintiff, John K. Kurtz, Special Deputy Glacier County Attorney.

The parties agree that this plea agreement is of the type

specified in:

 X Section 46-12-211(1)(a) MCA;

 X Section 46-12-211(1)(b) MCA;

 Section 46-12-211(1)(c) MCA.

The parties hereto have agreed to the following:

1. The Defendant will enter a plea of guilty to all counts contained in the Information on file herein.

2. The Defendant and the State will join in recommending that the Defendant receive a six-year deferred imposition of sentence on all counts.

3. Further, the Defendant and the State shall further join in recommending that deferment of the Defendant's sentence shall be conditioned upon the following:

✓ a) That during the period of the deferred sentence, the Defendant shall remain under the supervision of the Montana Department of Probation and Parole, and shall, during that period, remain a good and law-abiding citizen, will obey all rules, laws and statutes of the United States of America, of the State of Montana, of the city or town in which she resides, and of any Indian reservation which she shall pass through and/or reside.

✓ b) The Defendant shall never again hold a position of fiduciary responsibility, directly or indirectly, during the period of deferral or thereafter. ?

✓ c) That Defendant shall not apply for or be issued a Montana Insurance Producer license during the period of deferral or

~~thereafter~~, and that she shall voluntarily surrender her Montana Insurance Producer license immediately to the Montana Insurance Commissioner.

✓d) That the Defendant shall not possess, purchase, sell, or give away any narcotic or dangerous drug or imitation dangerous drug except on the prescription of a licensed physician. [REDACTED]

✓e) That any conditions of probation recommended by the Ninth Judicial District Probation and Parole Officer shall be incorporated in the sentencing Order.

✓f) That the Defendant shall immediately serve 30 days in the Glacier County Jail, with 20 of those days suspended.

g) That the Defendant shall pay restitution to all known victims as determined by her probation officer.

h) That the Defendant shall immediately pay to the Glacier County Clerk of District Court the \$20.00 surcharge required by § 46-18-236 MCA and the Court Automation fee of \$5.00. [REDACTED]

4. If the Defendant has complied with the terms of this Plea Agreement as aforestated, then, in that event, at the end of six years from the date of this Plea Agreement, the State shall move to dismiss with prejudice to the merits all charges contained in the Information on file herein.

Defendant understands and specifically agrees that, in the event she fails to comply in any respect with the terms of this Plea Agreement between the date hereof and the date of sentencing, then, in that event, at the option of the State, the State shall be

[REDACTED]

[REDACTED]

[REDACTED]


[REDACTED]

free to recommend to the Court that the Defendant not be allowed to withdraw her pleas of guilty to the charges herein and, further, that the State shall be free to recommend any legal sentence.

Defendant acknowledges that she is guilty of the offenses to which she has agreed to plead guilty, as set forth above. IF EITHER PARTY FAILS TO ABIDE BY THE TERMS OF THIS AGREEMENT AND ALL CONDITIONS HEREIN, THEN THE OTHER PARTY, AT THAT PARTY'S ELECTION, IS RELEASED FROM PERFORMANCE UNDER THIS AGREEMENT.

Defendant acknowledges that she has discussed this matter fully with her attorney and that she is aware of the consequences of entering into this agreement. This agreement is being entered into not only to avoid trial, but to speedily dispose of this matter. Defendant acknowledges that she has signed this agreement FREELY, VOLUNTARILY and WITH FULL KNOWLEDGE OF HER STATUTORY AND CONSTITUTIONAL RIGHTS which have been fully explained to her by her attorney, as more fully set forth on Exhibit "A", attached hereto and by this reference made a part hereof for all purposes.

Dated this 23 day of May, 2002.


Wendy Nielsen, Defendant


Robert G. Olson, Attorney for Defendant


John K. Kurtz, Special Deputy Glacier County Attorney

EXHIBIT "A"
ACKNOWLEDGMENT OF WAIVER OF RIGHTS
BY PLEA OF GUILTY

In entering a plea of guilty to the charges in the Information on file herein and in signing the attached Plea Agreement, I hereby acknowledge, state and admit as follows:

1. That I am not under the influence of alcohol or drugs (prescription or otherwise), nor do I suffer from any emotional disturbance or mental disease or defect that would render me not competent to enter a plea of guilty or to sign the attached Plea Agreement.

2. That before entering a plea of guilty to the charges against me, I understand that I have the following rights:

- a) MY RIGHT TO REMAIN SILENT;
- b) MY RIGHT TO A JURY TRIAL AND A UNANIMOUS VERDICT IF GUILTY;
- c) MY RIGHT TO COUNSEL AND TO APPOINTED COUNSEL;
- d) MY RIGHT TO CALL WITNESSES ON MY BEHALF;
- e) MY RIGHT TO CONFRONT AND TO CROSS EXAMINE WITNESSES FOR THE PROSECUTION;
- f) MY RIGHT TO DEMAND THAT THE STATE PROVE ALL CHARGES BEYOND A REASONABLE DOUBT;
- g) MY RIGHT TO APPEAL A FINDING OF GUILTY.

Specifically, I understand that by entering a plea of guilty, there is nothing left for the State to prove; that I may be called to testify against myself at any sentencing procedure or hearing; that I waive or give up my right to challenge the way that the State has proceeded against me, and the way that it gathered evidence against me, that I waive or give up my chance of being convicted of a lesser offense; and that because of my plea of guilty, I could be barred from certain occupations or professions.

3. That no threats, promises, coercion, force or duress have been used or brought against me in order to cause me to enter a plea of guilty to the charges against me or to compel me to sign the attached Plea Agreement.

4. That I have discussed the Information with my attorney and that my attorney has advised me of any possible defenses which might be interposed on my behalf at trial of the charges.

5. That I understand that the maximum sentences for the crimes with which I am charged are as follows, and that in the event I plead guilty to more than one offense, the Court could sentence me to serve my sentences consecutively (i.e. one after the

other), rather than concurrently (ie. all at the same time:

<u>OFFENSE</u>	<u>MAXIMUM SENTENCE</u>
THEFT BY COMMON SCHEME, A FELONY	a maximum fine of \$50,000.00 and/or imprisonment in the state prison for 10 years
THEFT, A FELONY	a maximum fine of \$50,000.00 and/or imprisonment in the state prison for 10 years
THEFT BY COMMON SCHEME, A FELONY	a maximum fine of \$50,000.00 and/or imprisonment in the state prison for 10 years
THEFT BY COMMON SCHEME, A FELONY	a maximum fine of \$50,000.00 and/or imprisonment in the state prison for 10 years

6. That I understand further at trial I might be found guilty of a lesser included offense to one, some or all of the offenses charged in the Information and that the lesser included offenses are as follows:

<u>OFFENSE</u>	<u>MAXIMUM SENTENCE</u>
THEFT BY COMMON SCHEME, A MISDEMEANOR	a maximum fine of \$1,000.00 and/or imprisonment in the county jail for six months
THEFT, A FELONY	a maximum fine of \$1,000.00 and/or imprisonment in the county jail for six months
THEFT BY COMMON SCHEME, A FELONY	a maximum fine of \$1,000.00 and/or imprisonment in the county jail for six months
THEFT BY COMMON SCHEME, A FELONY	a maximum fine of \$1,000.00 and/or imprisonment in the county jail for six months

7. That my attorney has explained to me each element of the crime(s) with which I am charged, and I hereby admit that facts exist to support a jury's finding that I committed each element of THEFT BY COMMON SCHEME, A FELONY, in violation of §§ 45-6-301(1)(b) and 45-2-101(7), MCA (3 counts); and, THEFT, A FELONY, in violation of § 45-6-301(1)(b).

8. That my attorney is competent; that I have been well advised by my attorney and am satisfied with his services; that he has competently represented me; that he has done everything that I asked him to do for me; that I have had sufficient time to consult with my attorney; that my attorney and I have discussed the merits my case; that my attorney and I have discussed the likely outcome of a trial in this case; and that I have read and have discussed the attached Plea Agreement and this Exhibit with my attorney and understand the contents thereof. I fully understand what I am doing.


Wendy Nielsen

Dated: May 23, 2002

In signing the attached Plea Agreement, I certify that the Defendant has read the foregoing; that she understands her constitutional and statutory rights which I have explained to her; that this agreement is being voluntarily made and entered into; and that she is waiving her right to a speedy trial whether provided by statute or constitution.

Dated this 23 day of May, 2002.


Robert G. Olson, Attorney for Defendant